



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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PAT QUINN, GOVERNOR

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217-782-7592

April 27, 2010



Mr. Thomas D. Lupo  
Williams Montgomery & John  
20 North Wacker Drive, Suite 2100  
Chicago, Illinois 60606

Mr. Scott Moyer  
Manager, Remediation  
United Technologies Corporation  
10501 Ray Drive  
Roscoe, IL 61073

Re: 2010300018- Winnebago County  
Interstate Pollution Control- Rockford, Illinois  
Request for Institutional Control Study  
Superfund/Technical Reports

Dear Mr. Lupo and Mr. Moyer:

The U.S. Environmental Protection Agency ("EPA") is undertaking an initiative to evaluate institutional controls ("ICs") at Superfund sites. ICs may be needed to restrict uses of sites where on-site hazardous substances remain above levels that allow for unlimited use and unrestricted exposure. ICs may be necessary to prevent interference with Superfund remedy components. A description of EPA's IC initiative may be found in "Strategy to Ensure Institutional Control Implementation at Superfund Site, "OSWER No. 9355.0-106 (2004), <http://www.epa.gov/superfund/policy/ic/strategy.htm>

EPA is seeking the cooperation of potentially responsible parties as part of this nationwide effort. Since this site is state lead, Illinois EPA will be reviewing the ICs on behalf of U.S. EPA. The purpose of this letter is to seek your assistance in evaluating ICs for the Interstate Pollution Control (IPC) Superfund Site ("the Site"), located at Rockford, Illinois. Specifically Illinois EPA is requesting that you submit an IC investigation/study to Illinois EPA within **60 days of receipt of this letter**. Please provide Illinois EPA with a notice of intent to comply with this request **within 14 days of the date of receipt of this letter**. Please 'cc' U.S. EPA on all correspondence to Illinois EPA on this endeavor.

The IC investigation/study will be used by EPA in its current review of the remedial action for the Site pursuant to Section 121 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9621. Section 121 of CERCLA mandates that, no

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Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

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Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463

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less often than every five years, EPA must review remedial actions where hazardous substances, pollutants or contaminants remain in place to assure that human health and the environment is being protected by the remedial action.

As you know, remedial actions have been taken at the IPC site, but the remedy does not allow unlimited use and unrestricted exposure. The long term protectiveness, effectiveness and integrity of the remedy depend on compliance with ICs that were required by the Site's Record of Decision (ROD) and the Consent Decree.

Paragraph 16 of Section VII (State Periodic Review) of Consent Order 05 C 50138 states, "RD/RA Performing Settling Defendants shall conduct any studies and investigations as requested by Illinois EPA, in order to permit Illinois EPA to conduct reviews of whether the Remedial Action is protective of Human health and the environment at least every five years as required by Section 121 (c) of CERCLA and any applicable regulations."

The IC investigation/study is necessary for Illinois EPA to conduct a review of whether the remedial action is protective of human health and the environment.

The goals of the IC investigation/study are: a) to evaluate whether institutional controls currently exist that were required by the ROD and Consent Decree; b) identify and recommend any corrective measures to existing ICs necessary for their effectiveness; and c) to recommend any new or additional ICs.

### **IC Study Report Requirements**

Within 60 days of receipt of this letter, please submit a draft IC investigation/study report to Illinois EPA for review and approval that includes the following minimum requirements:

1. **Current Map of Restricted Areas:** Provide a map that identifies the current boundaries of the restricted areas (that do not allow unlimited use and unrestricted exposure), boundaries of the Site, streets, easements, property ownership, and assessor's parcel number or other recorded plat or survey information.
2. **GIS Information:** Provide Geographic Information System ("GIS") coordinates that show the current boundaries of restricted areas and boundaries of the Site. Identify the accuracy of the coordinates (i.e. within 0.01 feet). A licensed surveyor shall provide certification that all coordinates are accurate within 0.01 feet. Please format the coordinates of the restricted areas and boundaries into an ESRI polygon-shape file. The shape file shall be projected into the UTM, and boundaries into an ESRI polygon-shape file. The shape file shall be projected into the UTM, NAD 83 projection system. Provide an attribute name in the shape file for each polygon submitted. For example: "site boundary", "no restrictions", "recreational only", "industrial only"

3. **Documentation on Existing Proprietary Controls:** Provide copies by the Recorder of Deeds (or other appropriate land records office) showing the clerk's recording stamps of existing proprietary controls (environmental restrictive covenants/easements etc.) for the restricted areas described above. Provide an aerial map that depicts the boundaries of the restricted area covered by the existing proprietary control, streets, easements, property ownership, and parcel numbers. Assess and discuss whether the boundaries of the area covered by existing proprietary controls match the boundaries of restricted areas based on current information.

4. **Assessment of Existing Proprietary Controls:**

a. Title Evaluations:

- i) Obtain from a title company a title insurance commitment using ALTA Commitment Form 1982 as amended "for information only purposes" for the restricted areas. Include copies of documents referenced in the title commitment. Include copies of encumbrances, utility right of ways, leases, and subleases impacting restricted areas;
- ii) Discuss whether the title commitment identifies/exempts existing proprietary controls for restricted areas;
- iii) Provide an aerial map that identifies parcel numbers and boundaries of current encumbrances (such as utility easements) that impact restricted areas. Discuss efforts to obtain subrogation agreements for such encumbrances. Include copies of subrogation agreements that have or will be obtained for such encumbrances.

- b. Assess and discuss whether existing proprietary controls have been executed in a legally enforceable manner. Discuss whether a grantee or prior owner "holds" the proprietary controls. Discuss whether the current owner is under an obligation for compliance with the land and groundwater restriction described above. Discuss whether existing proprietary controls "run with the land" (i.e. restrictions are binding on subsequent property owners). Discuss whether existing proprietary controls implement the IC objectives/performance standards described above.

5. **Documentation on Government Controls:** Identify and provide a current, dated and official copy of existing governmental controls [ordinance, statutes, etc.] that implement the IC objectives/performance standards for the restricted areas described above. Discuss whether the governmental control restricts all areas of unlimited use and unrestricted exposure at the Site. Indicate whether the governmental control contains a figure showing the current boundaries of the unrestricted areas based on most recent information. Indicate where to obtain information about the governmental control [ordinance]. Explain how affected parties such as homeowners, contractors and resource

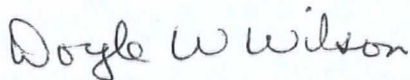
users can obtain information about the governmental control. Indicate whether the governmental agency has up-to-date maps of restricted areas. If such map is available, secure and provide a copy. Discuss whether affected parties and resource users are aware of and understand the restrictions described above. Have there been breaches of the use restriction described above? If so, how were they addressed by the governmental agency?

6. **Discuss compliance with Institutional Controls:** Discuss whether the property is being used in a manner consistent with the restrictions in the Consent Decree. Conduct site inspections and interviews with owners, lessees and other holders of property interests, and summarize the results. Indicate whether owners, lessees and other holders of property interests are aware of and complying with the restrictions. Indicate whether land use or expected land use on or near the site has changed since execution of the ROD. Indicate whether there are any new developments, either constructed or planned, in the area. Indicate whether there are any new construction permits pending. Indicate whether the property owner has any plans to sell or transfer the property.
7. **Assess monitoring:** Discuss how, when, and by whom compliance with the institutional controls is monitored. Discuss whether the results of the IC monitoring are routinely and promptly shared with EPA and the State. Discuss whether there are measures in place to ensure that modifications to the restriction require EPA and the State approval.
8. **Discuss effectiveness of Institutional Controls:** Discuss whether existing ICs are preventing exposure to hazardous wastes, pollutants or contaminants. Discuss whether there is potential human or ecological exposure. Discuss whether land and/or resource use has changed since execution of the ROD, ESD and ROD Amendment. If land or resource use has changed, discuss the plans regarding property's ICs. Discuss how the current land and resource uses relate to exposure assumptions and risk calculations. Discuss whether there are any unintended consequences resulting from the use of a particular restriction. Assess whether the controls (or lack of controls) are effective in the short term in maintaining land/groundwater restrictions above, maintaining performance standards and preventing exposure. Assess whether the control (or lack of controls) will be effective in the long term in maintaining the land and groundwater restrictions above, maintaining remedy performance standards and preventing exposure.
9. **Recommendations:** Propose any corrections to existing institutional controls that are necessary to ensure that the land and groundwater use restrictions described, above, are implemented correctly, are maintained and will be protective in the short term and the long term. Propose controls for remaining areas that do not support unlimited use and unrestricted exposure, but are not covered by existing controls. Include a title commitment for any proposed proprietary control. Propose subrogation agreements for any encumbrance that negatively impacts restricted areas. Propose subrogation agreements for any encumbrance that negatively impacts restricted areas. Propose monitoring requirements and modifications to the Operation and Maintenance Plan to

ensure that ICs are maintained and complied with in the short term and in the long term. The monitoring plan must include a schedule and an annual certification to Illinois EPA that ICs are in place and remain effective.

Please provide Illinois EPA with a notice of intent to comply with this request **within 14 days of the date of receipt of this letter**. If you have any questions concerning this request, please contact me at 217- 782 -7592 or by email at [doyle.wilson@illinois.gov](mailto:doyle.wilson@illinois.gov). You may also contact Howard Caine, Remedial Project Manager of U.S. EPA at 312 -353 -9685 or by email at [caine.howard@epa.gov](mailto:caine.howard@epa.gov).

Sincerely,



Doyle W. Wilson  
Project Manager  
Illinois EPA

cc: Robert Carson, Illinois EPA  
Stan Black, Illinois EPA  
Howard Caine, U.S. EPA  
Bureau File